

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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TOM V. AND/OR LOYCE V. HOWARD	)	
AND/OR HOWARD FRANK HAILSTONE,	)	
	)	DOCKET NO.: PT-1997-13
Appellant,	)	
	)	
-vs-	)	
	)	
THE DEPARTMENT OF REVENUE	)	FACTUAL BACKGROUND,
OF THE STATE OF MONTANA,	)	CONCLUSIONS OF LAW,
	)	ORDER and OPPORTUNITY
Respondent.	)	<u>FOR JUDICIAL REVIEW</u>

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The above-entitled appeal was heard on November 2, 1999, in the City of Lewistown, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was given as required by law. The taxpayer, Tom Howard, presented testimony in support of the appeal. The Department of Revenue (DOR), represented by Charles Pankratz, Region 2 leader, presented testimony in opposition to the appeal. Testimony was presented, exhibits were received and the Board then took the appeal under advisement; and the Board having fully considered the testimony, exhibits and all things and matters presented to it by all parties, finds and concludes as follows:

**FACTUAL BACKGROUND**

1. Due, proper and sufficient notice was given of this matter, the hearing, and of the time and place of the hearing. All parties

were afforded opportunity to present evidence, oral and documentary.

2. The taxpayer is the owner of the property which is the subject of this appeal and which is described as follows:

Lot 1 in Robert Apple Addition, City of Lewistown,  
County of Fergus, State of Montana, Land and  
Improvements thereon. (Geocode Code #2467-11-4-05-  
01-0000).

3. For the 1997 tax year, the DOR appraised the subject property at a value of \$18,750 for the land and \$46,150 for the improvements.

4. The taxpayer appealed to the Fergus County Tax Appeal Board stating, *"Attempt to learn what the bottom line of recent reappraisal represents. tax spiral since 1991 as compared to appraisal during the period -- compared with appraisal value of 1997 assessment notice, appear to indicate a readjustment as in 1993 - Are we to see the 200 percent readjustment that appeared in the news medias (sic)- during the in-action period of the last Legislator (sic)?"*

5. The County Board denied the appeal stating: *"1997 reappraised property value comparable to similar property in Lewistown."*

6. The taxpayer then appealed that decision to this Board stating:

*"My extensive inquiries (sic) and search of Court House Records and other obvious reasons - (such as: Actions of our elected Representation of the last ten years) indicates further appeal is necessary for clarification of present and FUTURE intent by the State Government and their agencies (sic)."*

### **TAXPAYER'S CONTENTIONS**

Mr. Howard testified that his home was built approximately 50 years ago. The property was annexed into the City of Lewistown in 1966. The house and garage are poorly constructed, were neglected, and need continual maintenance such as replacing deteriorated wiring and plumbing. The home is located close to a mobile home court and a concrete plant. Mr. Howard testified that traffic has increased over the years due to the construction of a new golf course and new housing developments.

### **DOR'S CONTENTIONS**

Exhibit A is a copy of the AB-26 form filed by the taxpayer. As a result of the review in September of 1997, a 50% reduction in the subject's land value was made due to the excess size of the lot. The size of the basement was reduced to 140 square feet.

The property is in fairly good condition. The improvements are similar to other properties in the neighborhood. The dwelling was built in 1952 and was given a quality grade of 4+, which is a little lower than an average grade. The CDU (condition, desirability, and utility) is listed as average.

Page three of Exhibit B is the Montana Comparable Sales Sheet. This property was market modeled. Mr. Pankratz indicated that some adjustments were made for the basement and land size. The control code indicator is two, which is within the acceptable range for the Department of Revenue's purposes of valuing property. There were some

indicator adjustments on the comparables which are also within the acceptable range for the Department of Revenue to use.

Exhibit C shows the breakdown of the taxes for the subject property from 1985-1998. This exhibit illustrates the relatively modest increase in taxable value. The Department of Revenue does not have control over the mill levies.

#### **BOARD'S DISCUSSION**

The taxpayer presented examples of taxes for several different properties but failed to present the Board with any comparable properties. There was nothing to suggest that any of the properties presented are comparable to the subject property. This Board has no control over the taxes on a property. The multitude of assessments comprising a tax statement, i.e., mill levies, street maintenance, solid waste, tree maintenance, etc. are determined locally. This Board's jurisdiction is limited solely to a determination concerning the assessed value of a property.

The parameters of this appeal were never determined. In his testimony the taxpayer failed to set a specific value for his property. There is no indication that any of the properties presented by the taxpayer were used to establish the market value for the subject. The taxpayer has not shown that the property is not at market value.

*When the taxpayer's property is appraised at market value he cannot secure a reduction of his own assessment even if he is able to show that*

*another taxpayer's property is under appraised.  
Patterson v. Department of Revenue, 171 Mont. 168,  
557 P.2d 798 (1976).*

The Montana Comparable Sales Sheet supports the DOR position that its sales comparison approach has resulted in an appropriate market value for the subject. For the foregoing reasons, the appeal is hereby denied and the decision of the Fergus County Tax Appeal Board is affirmed.

#### **CONCLUSIONS OF LAW**

1. The State Tax appeal Board has jurisdiction over this matter. **§15-2-302 MCA.**
2. **§15-8-111, MCA.** Assessment - market value standard - exceptions.  
(1) All taxable property must be assessed at 100% of its market value except as otherwise provided.
3. It is true, as a general rule, that the appraisal of the Department of Revenue is presumed to be correct and that the taxpayer must overcome this presumption. The Department of Revenue should, however, bear a certain burden of providing documented evidence to support its assessed values. (Western Airlines, Inc., v. Catherine Michunovich et al., 149 Mont. 347, 428 P.2d 3, (1967).

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#### **ORDER**

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall be entered on the tax rolls of Fergus County by the Assessor of said County at the 1997 tax year value of \$18,750 for the land and \$46,150 for the improvements, for a total value of \$64,900, as determined by the DOR and affirmed by the Fergus County Tax Appeal Board.

Dated this 23rd of November, 1999.

BY ORDER OF THE  
STATE TAX APPEAL BOARD

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GREGORY A. THORNQUIST, Chairman

( S E A L )

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JAN BROWN, Member

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JERE ANN NELSON, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 23rd day of November, 1999, the foregoing Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

Tom Howard  
209 Marcella Avenue  
Lewistown, MT 59457

Office of Legal Affairs  
Department of Revenue  
Mitchell Building  
Helena, Montana 59620

Fergus County Appraisal Office  
Appraisal Supervisor  
Fergus County Courthouse  
712 West Main  
Lewistown, MT 59457

Chuck Pankratz  
Cascade County Appraisal Office  
300 Central Avenue Suite 520  
Great Falls, MT 59401

John Lubinus  
Chairman  
Fergus County Tax Appeal Board  
RR1 Box 1688  
Lewistown, MT 59457

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DONNA EUBANK  
Paralegal